

<b>Summary of Public Comments General Issues</b>	<b>Comment Number</b>	<b>Department of Mental Health (DMH) Response (including modifications)</b>
Nearly all other (except 884 (b) 6 and 7) deleted and underlined text, is acceptable. These modifications are tremendously appreciated.	2PC1D	The DMH appreciates your comment.
The State must provide civilly committed individuals with more considerate treatment and conditions of confinement than criminals whose conditions of confinement designed to punish as outlined in the Notice of Modifications to Text Regulations. There is no justification for failing to provide these same rights and protections to Non-LPS patients. See Cal. Code of Regulations § 3130, 3138, 3141 and 3144.	2PC2F	Not applicable to post hearing changes.
DMH failed to comply with the requirements of the Administrative Procedure Act and cites no reference for adoption of the regulations.	2PC3I	Not applicable to post hearing changes.
DMH does not have the authority to enact these regulations, and/or modifications affecting 6600's.	2PC4J 2PC22AA	Not applicable to post hearing changes.
Chapter 4.5 takes away rights.	2PC4K	Not applicable to post hearing changes.
I found most of the changes still confusing and subject to interpretation by people who have repeatedly ignored our statutory and constitutional rights for years and have been sued in federal court because of it.	2PC5JJ	Not applicable to post hearing changes.
Beginning on page no. 1 of 9, I noticed that the individual's enumerated under the MDSO provision at Welfare and Institutions Code Section 6300 seq., have been deleted from the "NOTE", at the bottom of the page. Is there some explanation for this, or are those individuals 'excluded' as NON LPS Patient's?	2PC9A	Not applicable to post hearing changes.
Discontent over the extremely short amount of notice provided by the Office of Regulations for submitting these written comments. For persons with modern computers, faxes, and e-mail, perhaps two weeks does not seem like a short notice. However, since these proposed changes effect a group of people who do not have access to these items...the period of time allowed for making adequate research and response is way too short.	2PC14A	The Department followed the requirements of the Administrative Procedure Act.
Comparing the Notice of Modifications to Text of Regulations with the original proposed regulation text reveals that the modifications are, for the most part, merely reworked language of the original proposals.	2PC14B	The Department reworded the regulation text based on the comments.
It is inappropriate to treat any group of patients with other than LPS Act rights. LPS Act rights are for all persons involuntarily committed due to mental illness. That some DMH patients have criminal offenses in their histories has no direct bearing on those persons' commitment.	2PC14C	Not applicable to post hearing changes

**General Issues – Legal Challenges**

<p>1. Title 42 of the United States Code ("U.S.C.") Section 290 all subsections</p> <p>2. &amp; 3. 42 U.S.C. 10801 and 42 U.S.C. 10802</p> <p>4. &amp; 5. Title 42- C.F.R. Section 482.13 and 483.10</p> <p>6. Welfare and Institutions code ("W.I.C.") section 206</p> <p>7. W.I.C. Section 4027 which does not authorize regulations for 6600's</p> <p>8. &amp; 9. W.I.C. section 5008W.I.C. section 5008.1</p>	2PC12TT	<p>This list does not appear to relate to any specific provision of the proposed regulations. The commentor says that the cited legal authority "will clearly reveal numerous impediments to ...." our proposed regulatory action. However, and, nevertheless:</p> <p>1. 42 USC 290 relates to "National Institutes of Health Management Fund" and has no relevance to these regulations. He may think that 42 USC 290a is a subdivision of 290, but it is a separate section. There are numerous 290 sections, most having no relevance. The only one that seems to be relevant is 42 USC 290ii, which sets forth rights of residents of "certain facilities," and mainly talks about restraint and seclusion, we are in compliance with. (See copy of 42USC 290ii)</p> <p>2. &amp; 3. Sections 42 USC 10801 &amp;10802 were previously cited and commented upon. They are sections relating to the establishment and authority of PAI.</p> <p>4. &amp; 5. These sections of Federal Regulations do relate to patients' rights, but only apply in facilities certified for Medi-Care and/or Medicaid reimbursement.</p> <p>6. WIC 206 does not seem to have any relevance – it deals with housing and other issues of certain juveniles that are Wards of the Juvenile Court.</p> <p>7. WIC 4027 does not expressly contain authority for 6600's. We are also relying upon other, more general authority for regs.</p> <p>8. &amp; 9. WIC 5008 contains definitions that only apply to Part 1 (commencing with Section 5000) of Division 5 of the WIC – in other words, the LPS Act. WIC 5008.1 sets forth a definition of who is "judicially committed," and does not include a reference to WIC 6600. However, WIC 6250, which was amended later in time, in 1995, does include WIC 6600 as subject to judicial commitment.</p>
<p>Court Cases: U.S. Supreme Court said in (Baxstrom v. Herold) that any person having served his penal sentence should be treated no differently than all other civil commitments who were not at the end of a criminal sentence.</p>	2PC8C	<p>This is <u>not</u> what <u>Baxstrom</u> says. This 1966 decision addressed what the Equal Protection clause of the U.S. Constitution requires regarding procedures that must be provided to commit a person for treatment at the end of a prison term. The court said that, since civilly committed persons are entitled by New York law to a jury trial before being committed for treatment, the provision of New York law that allowed a person to be committed at the end of a prison term without a jury trial therefore violated Equal Protection. First, this issue relates to the commitment proceedings, not</p>

		to patients' rights after commitment. Second, since SVPs are entitled to a jury trial prior to commitment, the SVP act of California meets this requirement.
<p>In re Muszalski (1975) 125 Cal. Rptr. 286, at page 288 [52 Cal. App. 3d 500] (Exhaustion of Administrative remedies)</p> <p>In re Eric O. Locks (1999) 87 Cal. Rptr. 2d 303, at pages 305-306 (Exhaustion of Administrative remedies)</p> <p>Thor v. Superior court (Andrews) (1993) 21 cal. Rptr. 2d 357, at page 372 [5 Cal. 4<sup>th</sup> 725, 855 P. 2d 375] (Exhaustion of Administrative remedies)</p>	2PC9L	<p>The citation to the 1999 Locks decision refers to the original Appellate Court decision that was subsequently vacated when a new decision was issued in 2000. Although the main issue of the case turned out differently, in relation to the issue of exhaustion of administrative remedies, the 2000 decision was very similar and in line with the other cases cited.</p> <p>In short, these cases only stand for the proposition that, if a reasonable, viable system or mechanism for administrative review and resolution of patient complaints or grievances does exist, the patient is barred from taking the issue to the courts unless the patient has tried and exhausted the administrative mechanism first. If no such system or mechanism does exist, then the patient can go directly to court with the complaint, without exhausting the (non-existent) administrative remedies.</p> <p>None of these decisions require that the administrative complaint resolution mechanism also expressly set forth the "next steps" when the patient is dissatisfied with the final administrative review. It is assumed that it is established law that when administrative remedies (if they exist) have been exhausted, the person can file a petition in court to seek review or relief.</p>
Elrod v Burns 96 S Ct 2690, note 29 which used Ward v Georgia 370 U. S. 375, 391, 92	2PC12QQ	Both of these cases talk extensively about the sanctity and importance of the First Amendment right of free speech. However, neither case involved patients or inmates, and neither case mentioned anything about Internet access or usage.
<p>U. S. v. Sofsky 287 F. 3d 122, 133</p> <p>U.S. v. Peterson 248 F. 3d 74, 82-84</p>	<p>2PC12RR</p> <p>2PC12SS</p>	<p>Both of these cases have discussions regarding Internet access and usage in the context of parole conditions. However, both cases involved a person placed on parole in the federal system. Neither decision addressed what restrictions would be appropriate in an inpatient setting. Another point is that these decisions were issued by a federal court in the Second Circuit (addressing federal sentencing guideline issues and what restrictions could be imposed in the federal system for federal parolees convicted of federal crimes), while California is in the Ninth Circuit. This proposed regulation involves what restrictions (on Internet access and usage) can be imposed on persons committed to a secure inpatient treatment facility. Finally, in the <u>Sofsky</u> decision, the court itself admitted that "<u>Appellate courts</u> considering a similar restriction imposed upon defendants convicted of child pornography offenses <u>have reached different conclusions</u>." (emphasis added) In short, the cited decisions do not represent established rules or holdings by the courts in general, only the view of one court in a specific situation with particular facts. There is no established right of patients in inpatient facilities to Internet access, particularly with so many who have histories of convictions for predatory behavior. There are certainly other avenues and mechanisms for patients to exercise free speech.</p>

**DMH NOTE:** These next three cases all involved the rights of citizens and the powers of government in situations where the citizens were either in their own homes or in public areas. None of these cases deal with patients who have been committed to or placed in a secure treatment facility. While a person does not lose all rights by virtue of being in a secure treatment facility, the exact nature and scope of an individual's Constitutional rights are not the same as they would be on the street and must be determined in the context of the secure treatment environment and the safety and security of others in that environment.

<p>1.U.S v. U.S. District Court, E.D. Mich, 92 S.Ct. 2125 (1972). To remove citizens rights under mere assertions of "security" also violates judicial determinations.</p> <p>The term "security risk" is not a talisman by which constitutional limitations are erased and police are given a free hand. Farber v. Rizzo, 363 F. supp. 397 (fn.11), cf. U.S. v. U.S. District Court, supra.</p> <p>Government agencies cannot be given unfettered right to suppress its citizens because they consider them risky from prior experience. Kunz v. New York, 340 U.S. 290, 71 S. Ct. 312, 95 L. ED. 280 (1951)</p>	2PC14D	<p>None of the statements relating to these cases are direct quotes from the decisions.</p> <p>This case involved the issue of when does the government need to obtain a court order for electronic surveillance (wire-tapping), even in matters alleged to be a matter of national security. The proposed regulations do not purport to authorize any sort of electronic surveillance.</p>
	2PC14E	<p>This case involved police preventing persons from demonstrating in a public area, across the street from where the President was to speak. The proposed regulations do not attempt to prevent exercise of the First Amendment right of free speech.</p>
	2PC14F	<p>This case involved a refusal to issue a permit to a pastor seeking to preach in a public area. The proposed regulations do not attempt to prevent exercise of the First Amendment right of free speech.</p>

### Article 1. General Provisions

880 - Application of Chapter	Number	DMH Response (including modifications)
DMH does not have the statutory authority from Legislature for this proposal, nor does DMH have the ability to limit or restrict the constitutional rights of 6600's.	2PC12A	Not applicable to post hearing changes.
881 - Definitions - (a) Abuse	Number	DMH Response (including modifications)
The definitions for the terms in Sec. 881 contradict the statutory definitions provided for these terms in the WIC. Section 881 also contradicts the definitions provided by Black's Law Dictionary and Dorlund's Medical Dictionary. The terms included by reference are: Abuse, Confidential, Neglect, Privacy, Safety, Security.	2PC14G	The Department utilized definitions applicable to patients committed, for care and treatment, to a secured treatment facility.
The definition of "abuse" should not include the term "willful." Adoption of this definition would create an anomalous situation in which the Department is required to report and prevent abuse which it does not consider to be a violation of rights under its own regulations. It would also interfere with the administration of elder and dependent abuse reporting system because the Department would have to use two separate standards for addressing abuse. The Department should use the definitions of abuse contained in the elder and dependent abuse statute, Welfare & Institutions Code Sections 15610.07 and 15610.57.	2PC23A	<p>This comment raises a good point. The Department will revise this regulation to read as follows:</p> <p><b>1</b></p> <p>(a) "Abuse" means intimidation, punishment, unreasonable confinement, or willful infliction of injury physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.</p>

		Also modify citation in REFERENCE NOTE: <span style="color: red; font-weight: bold;">2</span>  NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code. Reference: Sections 4005.1, 4027 and 5510, 15610.07, and 15610.57, Welfare and Institutions Code, Title 42, GFR, Chapter IV, Subchapter C, Part 488, Subpart E, Section 488.301.
With regards to 881 (a) who decides what "abuse" is? What conduct does the hospital consider to meet this definition? Is this directed at patients, staff or Department of Police Services officials?	2PC4L	DMH utilizes an investigation process that determines abuse.
Section 881(a) "Abuse": Should be easy file lawsuits, punishing patients by drugs, being kept locked up, and forcing medications is legalized extortion of anything from patients over \$500.00.	2PC7A	General comments, not applicable to post hearing changes.
Section 881 (a): Abuse does not require acts of willful. Abuse has been defined elsewhere to include many forms not named in this definition	2PC12A	See response to 2PC23A
(A) p.g. 2 of 19 " <u>Abuse</u> " means intimidation, punishment,... { add Neglect}	2PC13 A	See response to 2PC23A and 2PC20B/ 2PC23B

881– Definitions – (b) Administrative Isolation	Number	DMH Response (including modifications)
The description of "administrative isolation" does not define what "temporary" means. A day, a week, a month, whatever DMH arbitrarily deems fitting? How long do investigations take?	2PC20D 2PC22A 2PC23C	The term "temporary", in itself, means that the situation is not permanent. Similar to behavioral interventions such as seclusion and/or restraint, it is not feasible to establish a set timeframe because each situation warranting its use is different. The Department has, however, established very strict minimum guidelines and has mandated that each hospital utilizing administrative isolation shall have a policy that outlines criteria and maximum timeframes for utilizing administrative isolation.
The description of "administrative isolation" does not include review or documentation guidelines. This type of isolation is as intrusive as any other type of restraint or seclusion. Therefore, documentation requirements should be no less.	2PC20D 2PC22A 2PC23C	While administrative isolation is not considered to be a behavioral intervention, the Department recognizes that this is a form of seclusion and agrees that documentation should be rigid. The Department has established very strict minimum guidelines and has mandated that each hospital utilizing administrative isolation shall have a policy that outlines detailed documentation requirements.
"Administrative isolation" – what visitation and telephone contact with families and loved ones is curtailed? Such arbitrary lock-up when an individual is "separated from other patients and the normal living environment" amounts to a jailing if it is involuntary.	2PC22A	Limitation or denial of any patient's rights while in administrative isolation is a part of procedural process and does not belong in a definition. Therefore, the definition of administrative isolation will remain unmodified. Each hospital will, however, have a policy in place that describes denial of rights guidelines and/or other measures necessary to ensure safety and security for all.
The definition of administrative isolation requires both the temporary separation of a patient from other patients, and the temporary separation of the patient from the normal living environment. Either one constitutes isolation. Therefore, "and" should be changed to "or."	2PC23D	For the purpose of these regulations, the use of administrative isolation in Department facilities will always result in both the separation of the patient from other patients and the temporary separation of the patient from the normal living environment (one action will not occur without the other).

		Therefore, this definition will remain unmodified.
The term “administrative isolation” is a term clearly indicative of attempts on the part of DMH to authorize the use of punitive detention for the purposes of punishment as part of its plan of managing difficult or disruptive patients, even though this is not clearly stated. This language and its related questionable purpose is legally flawed and requires due process protections and limitations to safeguard constitutional and statutory rights.	2PC22A	A definition is language that states a precise meaning or significance of a word or phrase and the comments provided are more relative to procedural application. The definition provided accomplishes this. However, to briefly respond to concerns regarding usage criteria, the Department has developed very strict guidelines for obtaining approval for the utilization of administrative isolation which prohibits usage for the purpose of punishment.
With regards to 881 (b) this is right out of the CDC handbook of isolate, generate, and prosecute SVP's to the fullest extent of the law, get them away from witnesses where no one can see the wrong being done to them.	2PC4M	It is the policy of the Department to use administrative isolation only when necessary and as a last resort for patient safety or the safety of others, and the collection of evidence and information for criminal investigations.
Section 881 (b) "Administrative isolation": As defined has no relation to mental health	2PC12C	Not applicable to post hearing changes.

881 - Definitions – (c)	Number	DMH Response (including modifications)
881 (c) Should be changed to include mail and/or documents from family members, business associates and acquaintances.	2PC4N	Not applicable to post hearing changes.
Section 881 (c); All mail to and from patients is confidential not just legal mail.	2PC12D	Not applicable to post hearing changes

881 - Definitions – (d) Confidential Telephone Calls	Number	DMH Response (including modifications)
Section 881 (d) All telephone calls to or from civilly detained or committed persons are confidential and may not be monitored by anyone without a valid court order authorizing said calls to be monitored.	2PC12E	Not applicable to post hearing changes.
Section 881(d) "Confidential telephone calls" We believe that confidential telephone calls should not be monitored or recorded by anyone, and suggest that the words "...by hospital staff" be deleted from the above emendation.	2PC11A	Not applicable to post hearing changes.
Not applicable.	Not Applicable	Upon internal DMH review it was determined that in the definition of "confidential telephone calls", there needs to be a " <b>that</b> " inserted before" are not monitored" to be grammatically correct:  (d) “Confidential telephone calls” means telephone calls <b>that</b> are not monitored or recorded by hospital staff. <span style="color: red; float: right;">3</span>

881 - Definitions – (e)	Number	DMH Response (including modifications)
881 (e) The list of items applicable to the penal commitments cannot be applied equally to the 6600 patient population without being punitive or invalidating the Legislative intent of the SVP Act.	2PC4P	Not applicable to post hearing changes.
881 (e) The Department's definition is now used to make anything "contraband" any your definition does little to clear that up (ambiguous).	2PC5KK	The DMH uses a global definition of contraband that includes specific examples but allows the individual hospitals to further that list based on their experiences, facility design and patient types. A specific contraband list will

		not be outlined in regulation language.
Section 881 (e) "Contraband": The term is ambiguous and dangerous in the hands of DMH.	2PC12F	Not applicable to post hearing changes.

881 - Definitions – (g)	Number	DMH Response (including modifications)
Section 881 (g) "Facility", The term facility for the care and treatment of Non-LPS is not needed as all patients are committed to DMH and are entitled to the same rights and treatment.	2PC12G	Not applicable to post hearing changes.

881 - Definitions – (k) Medical Care	Number	DMH Response (including modifications)
The definition of medical care has been improved. However, the definition of medical necessity is too narrow in excluding "restorative" care. Under that definition, procedures that have always been considered to be medically necessary could be denied such as physical therapy, therapy for stroke victims, prostheses, and durable medical equipment including canes, walkers and wheelchairs. "Restorative" should be removed from the definition.	2PC23M	The Department agrees to modify this definition as follows: <b>4</b>  "Medical care" means procedures determined to be medically necessary, and that are not merely cosmetic or restorative in nature.
881 (k) The state must provide 6600 committed individuals with more considerate treatment than that of the criminals whose confinement is designed to punish. See <u>Sharp vs Weston</u> 233, F.3d 1166, 1172 quoting <u>Youngberg vs Romeo</u> , 457 U.S. 307, 322. We did not ask to come here and as such, we should be able to receive adequate medical care without it being termed "cosmetic".	2PC4Q	The individual physician treating the patient will determine what medical care is necessary for the patient based on their medical assessment.
Section 881(k) Medical care definition should include state-of the-art, but not include the restriction "necessary" nor exclude cosmetic or restorative treatments.	2PC12H	The individual physician treating the patient will determine what medical care is necessary for the patient based on their medical assessment.
Section 881(k): "Medical Care" by definition, no dental work need be that essentially cosmetic in nature (like false teeth, partials, etc.) medical needs that might chronic and/or degenerative could be considered restorative and therefore not necessary	2PC8D	Medical care is determined on the basis of the individual's medical needs and may include items such as false teeth, partials and/or other restorative interventions deemed medically necessary assist with normal bodily functions, not cosmetic.

881 - Definitions – (m) Mental Disorder	Number	DMH Response (including modifications)
Section 881(m): "Mental Disorder" Recommends reference to DSM-IV-TR-2000 definitions for and use of the words "Severe, Moderate; and Full Remission, Partial Remission, By History".	2PC8E	Not applicable to post hearing changes.

881- Definitions – (n) Neglect	Number	DMH Response (including modifications)
The definition of "neglect" should not include the term "willful disregard." A person should not suffer neglect as regards to adequate food, clothing, shelter, safety, medical care or mental health treatment, whether it is willful or not. Patients have the right to expect care, or the absence of neglect, in a hospital.	2PC20B 2PC23B	This comment raises a good point. The Department will revise this regulation to read as follows:  (n) "Neglect" means willful disregard of the needs of a patient relating to adequate food, clothing, shelter, safety, medical
The Department should use the definitions of abuse contained in the		<b>5</b>

elder and dependent abuse statute, Welfare & Institutions Code Sections 15610.07 and 15610.57. Adoption of this definition would create an anomalous situation in which the Department is required to report and prevent neglect which it does not consider to be a violation of rights under its own regulations. It would also interfere with the administration of elder and dependent abuse reporting system because the Department would have to use two separate standards for addressing neglect.		<p><del>care, or mental health treatment</del> the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.</p> <p>Also modify citation in REFERENCE NOTE:</p> <p>NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code. Reference: Sections 4005.1, 4027 and 5510, 15610.07, and 15610.57, Welfare and Institutions Code, Title 42, CFR, Chapter IV, Subchapter C, Part 488, Subpart E, Section 488.301.</p>
881(n) This language needs to prohibit the hospital from depriving 6600 patients, adequate food, because a patient does not feel like making a quarter mile walk to the dining room.	2PC4R	This is an internal policy issue not a regulations issue. Patients may file a complaint with the hospital Patients' Rights Advocate on this issue.
881(n) Staff should be attired in white "medical uniforms". That way the 6600 patients could wear their "personal clothes".	2PC4S	W&I Code Section 7232 reads: "the State DMH shall issue a state hospital administrative directive by no later than 30 days following the effective date of the Budget Act of 1997 to require patients whose placement has been required pursuant to provisions of the Penal Code, and other patients within the secured perimeter at each state hospital, to wear clothing that enables these patients to be readily identifiable.
881 (n) 6600 patients are not being afforded the adequate housing requirements, prescribed by Title 22 § 73615, 73619, and 73611.	2PC4T	The hospital has not received deficiencies from licensing and oversight agencies regarding non-compliance with these Title 22 sections. Patients may file a complaint with the hospital Patients' Rights Advocate on this issue.
881 (n) Department of Police Services officials have been and are constantly attempting to "strike-out" 6600 patients.	2PC4U	Patients may file a complaint with the hospital Patients' Rights Advocate or consult with their attorneys on this issue.
881 (n) 6600s receive no treatment, unless they are in the phases, otherwise they are treated no different than the other patients.	2PC4V	The treatment program for 6600s is the Phase program. Patients may file a complaint with the hospital Patients' Rights Advocate on this issue.
Section 881(n) Neglect does not require willful conduct.	2PC12I	See response to 2PC20B/2PC23B
In the same unit they let patients run wild	2PC18A	Comment is unclear and DMH is unable to respond
<b>881 - Definitions – (o) Non-LPS</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Section 881(o) The classification "Non-LPS" is one the DMH does not have the constitutional or statutory authority to define.	2PC12J	Not applicable to post hearing changes.
<b>881 - Definitions – (p)</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Section 881(p) "Office of Patients Rights" This limits the OPR to services in the state hospitals and excludes the highly questionable "Facilities"	2PC12K	Not applicable to post hearing changes.
<b>881 - Definitions – (q)</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
881 (q) "Package" has meant any envelope over 1/2 inch thick even if it comes from a court, attorney, Legislative Printing Office (State or Federal) and is counted against your quarterly package, at least here t	2PC5LL	Not applicable to post hearing changes.



ASH.		
Section 881(q) "Package" The definition lacks a clear meaning	2PC12L 2PC22AB	Not applicable to post hearing changes.

881 - Definitions – (r) Patient	Number	DMH Response (including modifications)
Section 881(r) "Patient" Definition should not be limited to facilities, are not the persons committed to DMH in state hospitals patients, too?	2PC12M	Not applicable to post hearing changes.
"Patient" must be defined to exclude residence housed prior to having had a disputed diagnosis proven, found, or adjudicated and who are not held for treatment, or, such residents must have a separate description listed under "patient" in Section 881(r).	2PC21NA	Not applicable to post hearing changes.

881 - Definitions – (t) Physical Restraint	Number	DMH Response (including modifications)
"Physical restraint" as defined, is with entirely too little limitation as to what is meant by "physical force"	2PC22AC	Not applicable to post hearing changes.

881- Definitions – (u) Privacy	Number	DMH Response (including modifications)
"Privacy" means personal space away from view and observation of other persons. Your definition is too restrictive and unacceptable. It allows observation of residents by individuals of the same sex at all times and for any reason. The exception to privacy swallows up the rule. It does not provide for privacy in any circumstance other than "unnecessary" observation by the opposite sex.	2PC21A 2PC23K	The definition for privacy as proposed in the regulations is consistent with the intent of existing law under Welfare & Institutions Code, Section 5325.1(b). The very nature of being a patient in a state facility (a shared living environment) will result in some limitations with regards to privacy. While we will take measures to ensure the highest level of privacy possible, it is not feasible for a regulation to mandate that state facilities ensure patients receive the same level of privacy of persons living in a private home/living environment.
Privacy is the right to be let alone. It is also the right to associate and converse, free of monitoring or interference. It should be defined in that way in the regulations.	2PC23K	There are many different definitions and interpretations for the term "private" or "privacy", each being related to a specific situation or setting. The definition of "privacy", as provided for in these regulations, is to ensure that patients and others fully understand the meaning of privacy as it relates to a shared living environment within a state facility. This definition will remain unmodified.
881 (u) This definition should include "Pat downs" by female Department of Police Services. Female's conducting locker searches often make remarks that are embarrassing, humiliating and uncalled for.	2PC4W	Patients may file a complaint with the hospital Patients' Rights Advocate on this issue.
881 (u) "Privacy" as defined here is not a definition but only a condition.	2PC5MM	It was difficult to understand the entire paragraph surrounding this comment. After review of this paragraph, DMH determined that the post hearing modification for this definition stands.
Section 881(u) "Privacy" privacy means being free from view or presence of others when desired.	2PC12N	Definition does not address need for regulation. After review, DMH determined that the post hearing modification for this definition stands.
Section 881(u) recommended definition change based on position that "privacy" should be defined by freedom from unnecessary observation irrespective of the observer's gender.	2PC11B	Definition does not address need for regulation. After review, DMH determined that the post hearing modification for this definition stands.

881– Definitions – (v) Protective Isolation	Number	DMH Response (including modifications)
---	--------	--

The description of “protective isolation” does not include review or documentation guidelines. This type of isolation is as intrusive as any other type of restraint or seclusion. Therefore, documentation requirements should be no less.	2PC23E	Review and documentation guidelines are part of a procedural process and do not belong in a definition. Criteria and timelines for usage will be outlined by facility policy.
The definition of protective isolation should be amended to provide that protective isolation is temporary, and that protective isolation should be employed only when other methods of protecting the individual have been tried and failed.	2PC23	Review and documentation guidelines are part of a procedural process and do not belong in a definition. Criteria and timelines for usage will be outlined by facility policy.
The term “protective isolation” is a term clearly indicative of attempts on the part of DMH to authorize the use of punitive detention for the purposes of punishment as part of its plan of managing difficult or disruptive patients, even though this is not clearly stated. This language and its related questionable purpose is legally flawed and requires due process protections and limitations to safeguard constitutional and statutory rights.	2PC22B	A definition is language that states a precise meaning or significance of a word or phrase and the comments provided are more relative to procedural application.
881 (v) This definition should not be tolerated in a hospital environment and only those who request it should have it granted.	2PC4X	DMH feels this process may be necessary for the protection of patients from harm by other patients. The criteria for administrative or protective isolation will be outlined in each facility policy and in the patients’ rights handbook.

881 - Definitions – (w) Safety	Number	DMH Response (including modifications)
The word “potential” should not be used to modify the words “danger” or “risk” because there is no such thing as potential danger or potential risk. Danger and risk are, by definition, potential. In addition, the word “risk” does not refer to anything. Is the risk that the definition is meant to refer to risk of injury, harm or damage? If so, the definition should so specify.	2PC23G	The terms “danger” and “risk” are synonymous with each other and mean exposure or vulnerability to harm. “Potential” means possible but not realized and is very applicable to danger and/or risks as it is the Department’s goal to prevent harm and provide a safe living environment. The department finds that the word “potential” actually provides more clarification with regards to safety and, therefore, the definition will remain unmodified.
The term “safety” is not generally used to refer to the protection of property. If property is at risk of being used improperly, taken, damaged or destroyed, one would not generally say that the property is “unsafe.” Unsafe can refer to the condition of the property, but is not used to refer to risk to the property itself. Since property is referred to in the definition of “security” it does not need to be mentioned in the definition of “safety.”	2PC23H	Definitions have been provided in these regulations because textbook explanations for several of the terms used are insufficient to provide a clear meaning as it relates to a state facility living environment. The act of damaging property raises more concern from a safety standpoint (injury to patient or others) than it does for security purposes. Therefore, this definition will remain unmodified.
The main problem with this definition (safety) is that it provides limitless grounds for denying rights for “good cause”. One of the grounds for good cause under Section 884 (c)(4) is “the exercise of the right would compromise the safety and security of the facility and/or the safety of others.... Since every thought, word, or deed could, in the judgement of hospital staff, “compromise” safety or security as defined, there is a measureless standard for denial of rights under this definition. There must be a standard for measuring what constitutes a “compromise” of safety in order to prevent unnecessary denials of rights.	2PC23J	<p>This comment speaks more towards how this term may affect other Non-LPS regulations or processes than the precise meaning of the word as intended. “Safety” as defined in these regulations, is a key goal and responsibility of the Department and the intent or language of this definition cannot change to something less substantial because applicability to other procedures described in these regulations are in question.</p> <p>In addition, the good cause criteria listed under Title 9, Section 865.2(1) does not reference an act that could be “injurious” to others (only specifies injurious to the patient or an act that would infringe upon the rights of others), hence the need to add item (4) to subsection 884 (c) - <i>“the exercise of the right would compromise the safety and security of the facility and/or</i></p>

		<i>the safety of others....</i> The Department also does not believe there is any room for “compromise” as it relates to safety; safety, as defined, needs to be ensured to the utmost of our ability at all times. While we do not wish to deny a patient their rights, the protection of patients <u>and others</u> from harm will continue to take a higher priority over the exercise of one’s rights. The definition for “safety” will remain unmodified.
881 (w) Who's safety, patients or staff? What actions spawned this change?	2PC4Y	It refers to the safety of all persons, including patients, staff and visitors. Numerous comments were sent in during the first public comment period to separate and define safety and security.
Section 881(w) "Safety" Safety means protection of persons and property from a realistic potential danger, risk, injury, harm, or damage.	2PC12O	“Potential” means possible but not realized and is very applicable to danger and/or risks as it is the Department’s goal to prevent harm and provide a safe living environment. The department finds that the word “potential” actually provides more clarification with regards to safety and, therefore, the definition will remain unmodified.

881- Definitions – (x) Security	Number	DMH Response (including modifications)
The definition of “security” is overly broad and vague and can include everything that the hospital does. Patients could be denied access to visitors because the visiting area can’t be “managed.” A definition of security should not include the management or accountability of the hospital. There must be a standard for measuring what constitutes a “compromise” of security in order to prevent unnecessary denials of rights.	2PC20A 2PC23I 2PC23J	The department has struggled with this definition for some time, often with the reasons mentioned in mind, but has determined that the term “security” must include the management practices used by the facility to protect against unauthorized entry into protected areas, unauthorized exits from secure areas, and the multitude of other measures necessary to ensure safety.
880 (x) "Security" is ambiguous and subject to almost anything they want.	2PC5NN	It is not the intent of the Department to develop regulations that purposely jeopardize patients’ rights. We recognize your concerns related to the possibilities of staff abusing these rights for convenience or staffing concerns and will have facilities revise/develop policies that prompt patients rights awareness. A heavy focus on rights will also be provided by the patients rights advocate during training to staff and patients, policy development and the complaint patient complaint process. The definition of “security” must remain unmodified.
"Security": Page no 5 of 19 under X, the language is extremely ambiguous. Can an explanation of "measures necessary" be included in any revision?	2PC9B	
Personal security of other patients and staff are encompassed in the definition of safety and that issue therefore does not need to be addressed again in the definition of security.	2PC23I	Security and safety go hand in hand; one cannot effectively occur without the other in a secured living environment. The definition of “security” must remain unmodified.
881 (x) Does this mean security of the patients from staff or staff from patients? The language needs to include actions that are not intrusive or redundant to the patients.	2PC4Z	It refers to the safety of all persons, including patients, staff and visitors.
Section 881(x) "Security" Security means the reasonable measures necessary to achieve the accountability of all persons as well as property within the hospital.	2PC12P	Definition does not address need for regulation. After review, DMH determined that the post hearing modification for this definition stands.
“Accountability” must be defined are stricken as it leaves any resident open to abuse, harassment or placement on restriction merely because some staff feels the resident needs a lesson in accountability.	2PC21AA	It is the intent to use the word “accountability” to mean responsibility of patients, staff and visitors, as well as the physical structures and grounds.

<b>881 - Definitions – (z) Treatment</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
“Treatment” cannot be at the discretion of the <u>interdisciplinary team</u> who is also permitted to make their own diagnosis and need for treatment. Their treatment may entail punishment to cure or accomplish “accountability.”	2PC21AB	Not applicable to post hearing changes.
Language is too vague with reference to “clinical intervention and action.” Does clinical intervention include forced medication on a non-willing patient? Does “action” mean restrictions, deprivation, forced movements, ward detentions, seclusion and restraints, arbitrary denial to attend religious services?	2PC22AD	Not applicable to post hearing changes.

<b>881 (aa) - Treatment Plan</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
881 (aa) "Treatment Plan" if this is anything like the "90 day treatment plan" they are now using except that this one is done by "interdisciplinary team" rather than "care givers" and are computer generated based on your cooperation or lack thereof. This one only sounds like you could not behave yourself so they had to use a "interdisciplinary team".	2PC5OO	Not applicable to post hearing changes.
Section 881 (aa) Treatment Plan; The patient is forced to attend treatment every 90 days or suffer punishment. Team actually represent the District Attorney interests, not patients.	2PC8F	Not applicable to post hearing changes.
“Interdisciplinary” is not appropriate when referring to treatment needs of residents or hospital patients.	2PC21AC	Not applicable to post hearing changes.

### Article 2. Non-LPS Patients’ Rights

<b>881- Notification of Rights</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Section might be better served by handing the "patient" a Title 15 from CDC.	2PC8H	Title 15 is not applicable.

<b>882(a)-</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Section 882(a)_Upon admission to the hospital, each patient shall be informed of <u>all</u> of their Federal and State Constitutional, Statutory, and Regulatory Rights, including those special rights as a Mental Health Patient.	2PC12Q	The rights in this rulemaking are the applicable rights provided to the patients upon admission.

<b>883- Non-LPS Patients’ Rights – Non Deniable (a)</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Comment suggests that the following deleted text be kept in the regs –	2PC19A	This language must remain deleted because all of the rights listed under Section 883 are now “non-deniable”.
Comment suggests that the following deleted text be kept in the regs –	2PC19B	Similar text is now available under subsection (b) – <i>Non-LPS patients have the following rights</i> ”. Language regarding “medical and personal care” was deleted because not all of Section of 883 relates to medical or personal care.
Comment suggests that the following deleted text be kept in the regs –	2PC19C	This text will remain deleted in Section 883 because the right to education has been moved to Section 884(9).
Comment suggests that the following deleted text be kept in the regs	2PC19D	This text will remain deleted in Section 883 because the right to social

		interaction has been moved to Section 884(10).
Non-Patient residents must be added or the definition of “patient” must denote non-patient residents.	2PC21B	These regulations do not recognize “non-patient” residents. All individuals who reside in a state facility are considered “patients”
All rights are non-deniable except for good cause determined by an independent judicial hearing with full and complete due process and equal protection of the law. Section 883 All of our rights, constitutional, statutory, and regulatory, must be listed, not just a few.	2PC12R	The rights in this rulemaking are the applicable rights provided to the patients upon admission.

883 (b)(1) - Privacy, Dignity, Respect and Humane Care	Number	DMH Response (including modifications)
Privacy is privacy, this includes, toiletry, bathing, and personal hygiene as well as living conditions. Title 22 clearly supports this provision of the law in §73619 (stated in Section (n), subsection (c), Paragraph 2), see also § 73523 (.11 & .20).	2PC4AA	While it is their intent to utilize same sex staff members for supervision whenever possible, DMH cannot always guarantee that staff members of the same sex will be available. DMH will continue to provide patients with as much privacy as possible while ensuring safety and protection from harm.
There is no real privacy. Those who are forced to live in a dorm setting can expect no true definition of privacy as long as they remain incarcerated.	2PC8H	This statement is not specific in concerns about the post hearing language.
There is no such thing as in California related to "least restrictive" doctrine, except in writing, and then only because it's required to meet the traditional standards of treatment.	2PC8I	This statement is not specific in concerns about the post hearing language.

883 (b)(2) – Treatment for a Diagnosed Mental Disorder	Number	DMH Response (including modifications)
You cannot be housed at ASH as it is too restrictive, more so than even a State Prison.	2PC4BB	This is an issue with the individual facility and not the language in the post-hearing changes. Patients may file a complaint with the hospital Patients’ Rights Advocate on this issue.
That is an excellent start and recommended by every court that ultimately decides these issues. But they are only words when you look at all the rules proposed by the "Department" is trying to implement.	2PC5RR	This statement is not specific in concerns about the post hearing language.
The language of the proposed modification is too vague to give useful guidance to patients, staff...regarding what “least restrictive” and “promotes personal independence” means?	2PC14 N	The definition of least restrictive and personal independence is individual for each patient. Determining the proper treatment and placement of a patient is based upon their assessed individual needs.

883 (b)(3) – Medical Care	Number	DMH Response (including modifications)
Everything in this paragraph is fine, except for the fact that the ASH staff, is not, complying with it.	2PC4CC	This is an issue with the individual facility and not the language in the post-hearing changes. Patients may file a complaint with the hospital Patients’ Rights Advocate on this issue.

883 (b)(4) – Psychosurgery and Other Hazardous Procedures	Number	DMH Response (including modifications)
“Other hazardous procedures” should include electro-shock or convulsive treatment as specified in Welfare & Institutions Code, section 5325 (f).	2PC20E 2PC23L	<p>Comment indicates that it is important to patients and others that the regulations specify the right to refuse electro-shock therapy and experimental procedures instead of saying other hazardous procedures. Therefore, the Department will modify this subsection as follows:</p> <p>(4) A right to <del>be free from</del> <b>refuse</b> psychosurgery, <b>electroconvulsive therapy,</b> <b>experimental</b> and other hazardous procedures.</p>

"Other hazardous procedures" should include mega doses of medication.	2PC20E	The Department is unable to consider or include "mega" doses of medication as a hazardous procedure in this right. State facilities have "Therapeutic Review Committees" delegated to address the usage of medications prescribed outside the acceptable standards for psychotropic medication guidelines. Medication practices are also monitored and/or governed by various licensing boards and peer review agencies. This definition will be modified only as shown above:
It should also include the right to refuse experimental procedures. See 42 U.S.C. Section 10841 (1)(E).	2PC23L	See 2PC23E
Recommends change to "A right to refuse any and all treatment or care unless specially ordered by court after due process.	2PC12V	See 2PC23E

<b>883 (b)(5) – Free from Harm, Abuse, Neglect...</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
I noticed that there were five different definitions for restraint of person all of which appear to be done without due process. I noticed an absence of human intervention and one-on-one as a method to allow the patient the least restrictive method (883 9b0 920) of protecting the patient.	2PC5PP	There were different types of behavioral interventions included in the statement. The specific policy and procedure at the hospital will address the due process and non-physical preventative interventions staff are trained to use. The criteria for the behavioral interventions listed in this right will be outlined in each facility policy and in the patients rights handbook
The wording makes one believe that forced medications will be allowed if it is not excessive.	2PC5SS	This statement is not specific in concerns about the post hearing language.
The right to be free from harm including medications, restraint, isolation, etc... patients are subjected to retaliation for filing complaints, for differences of opinion, inaccurate charting in the patient chart, pulling level, etc.	2PC8J	Not applicable to post hearing changes.
Reference Section 883(b)(5) "or in quantities that interfere with the treatment program." It may be necessary to revise this ambiguity by simply including a mandated quantity, say perhaps, [not in excess of 48 hours without written authorization.]	2PC9C	Time limits regarding the treatment procedures in this section cannot be mandated as each incident or use requires assessment prior, during and after application. The post-hearing modification stands.

<b>883 (b)(6) - Confidentiality</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Any person works in the hospital has immediate to our medical files. Information can be made available to the court and therefore the public. 6600 patients are forced to sign a contract before they are allowed to participate in the only recognized treatment program here at ASH.	2PC8K	Not applicable to post hearing changes.

<b>883 (b)(7) – Informed of Complaint Process</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
We indeed have been served very poorly by those funded and paid to protect us. The system has taken 2 to 3 months to respond to complaints. Don't have rights listed in the W& I Code pamphlets.	2PC8L	The comment is not specific to the language in the post-hearing text.
too vague... "Process for appeal" doesn't address what it means by "process"	2PC14 P	The appeal process is explained in Section 885.

<b>883 (b)(8) – Access Patients' Rights Advocate</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
"Confidential" communication should also apply to communication with the Patients' Rights Advocate	2PC23O	Not applicable to post hearing changes.

<b>883 - (b)(9) - Communicate with Attorney</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
This must be expanded to permit confidential communication with all persons, officers and offices listed in CCR title 15 rather than an (one?) attorney.	2PC21D 2PC23N	Confidential communications will be extended to the attorney(s) of record.
This regulation has been improved with the addition of the word "confidential". A problem remains with the regulation by allowing the opening of "confidential" mail by hospital staff outside the presence of the resident. The regulations should reaffirm the right to receive confidential and unopened mail from an attorney.	2PC23N	Section 884 (b)(6) of these proposed regulations specifies that confidential mail shall not be read. This right will remain unmodified.
All 6600 patients need to be allowed to conduct confidential communications with their attorney, through correspondence, telephonic and through personal visits with no staff or DPS, intervention of any kind.	2PC4DD	This statement is not specific in concerns about the post hearing language. The Facility Director is charged with maintaining a safe and secure treatment environment for all patients and has developed procedures to ensure that occurs. Patients may file a complaint with the hospital Patients' Rights Advocate on this issue.
The right to confidential correspondence should be with everyone except maybe by those who have abused that right and had Due Process.	2PC5TT	This right is for everyone as defined in Section 881(c).
Recommends delete "during regular scheduled visiting hours days and hours."	2PC12X	Not applicable to post hearing changes.
Violates the 5 <sup>th</sup> and 14 <sup>th</sup> Amendments	2PC14 Q	Not applicable to post hearing changes.

<b>883 (b)(10) – Religious Freedom and Practice</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
We have the right to religious freedoms and practices, regardless of the nomenclature of the facility.	2PC4EE	This statement is not specific in concerns about the post hearing language. The Facility Director is charged with maintaining a safe and secure treatment environment for all patients and has developed procedures to ensure that occurs. Patients may file a complaint with the hospital Patients' Rights Advocate on this issue.
The State can not just pull out it's "Security" card as the magic talisman.	2PC5UU	This statement is not specific in concerns about the post hearing language.
Recommends deletion of the words: "within the context of the environment of a secure treatment facility."	2PC12Y	Not applicable to post hearing changes.
As modified, violates the 1 <sup>st</sup> Amendment	2PC14 R	Not applicable to post hearing changes
Can revision be made to the phrase: within the context of the environment...? It appears sufficient to simply say: [...within the context of a secure treatment facility.]	2PC9E	Not applicable to post hearing changes.

<b>883 (b)(11) – Physical Exercise and Recreational Activities</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
"Opportunities" must be stricken as staff may deny these rights to exercise and recreation saying a resident has forfeited such opportunity for some fabricated reason.	2PC21D	This is not a good cause deniable right, therefore, staff may not require a patient to forfeit this right for fabricated reasons. This right will remain unmodified.
This language should include Heavy Bag activities for persons skilled in Boxing and martial Arts.	2PC4FF	This is an issue with the individual facility and not the language in the post-hearing changes. Patients may file a complaint with the hospital Patients' Rights Advocate on this issue.
Most prisoners in CDC have more physical/recreational opportunities than persons at ASH. Concerns with limited use of courtyard and access to other recreational activities an equipment	2PC8M	Not specific in concerns to post hearing changes.

Recommends changes to read: A right to outdoor and indoor physical exercise and recreational activities."	2PC12Z	Not applicable to post hearing changes.
---	--------	---

<b>– Patients' Rights Subject to Denial for Good Cause (a)</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Comment suggest that the following deleted text be kept in:	2PC19E	This text will remain deleted because the rights referenced in Subsection (a)(1) are now found in Subsection (b).
There is not one mention of any Due Process in this whole section.	2PC5VV	Not applicable to post hearing changes. Section 884 is for the patients Rights Subject to Denial for Good Cause. Due Process is outlined in Section 885 Complaint and Appeal Procedure.
The rights set forth in this section should be combined with those listed in section 883, then augmented the other constitutional, statutory, and regulatory rights, including those special rights of mental patients in the United states.	2PC13A	Not applicable to post hearing changes. The rights in this rulemaking are the applicable rights provided to the patients upon admission

<b>884 (b)(1) – Personal Possessions</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
This right is meaningless, since DMH does not provide adequate living or storage space for comfortable long-term living. Contraband is changed frequently by DMH and currently includes numerous petty items...	2PC12BB	Not applicable to post hearing changes.

<b>884 (b)(2) – Storage Space</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Space has little to do with this subject. My room is large enough to fill with many more items. Not allowed to store personal purchases or take when transferred to jail. Some items are disallowed upon return from jail.	2PC8N	Not applicable to post hearing changes.
DMH should provide adequate storage for each patient in his living area under his control.	2PC12CC	Not applicable to post hearing changes.

<b>884 (b)(3) - Money</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Spending allowance is overly restrictive	2PC8O	Not applicable to post hearing changes.
We should be allowed to keep, maintain and otherwise utilize our own bank accounts and credit cards to access any and all of our own money as we see fit.	2PC12DD	Not applicable to post hearing changes.

<b>884 (b)(4) - Visits</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
This regulation is much improved. However, the regulations should specify that residents have a right to confidential communications with visitors.	2PC23R	The facilities are unable to ensure that each patient can have confidential communications with visitors due to space and security concerns.
There is no justification for limiting the frequency of visits, in that Welfare & Institutions Code 5325 protects the right to see visitors each day. Frequency is more appropriately regulated through the good cause denial procedures.	2PC23S	It is not the intent of the Department to limit or deny the right to see visitors each day, but facilities do not have control over the number of visitors who may wish to visit on any single given day. Limitations for the frequency and/or duration of visits will only occur on those occasions when the number of scheduled visitors exceeds the facility's space capacity as set by the Fire Marshall. Generally, only a time limit is implemented so all patients will have an opportunity to see their family and friends, rather than turning
Appears to be a difference from the traditional right to daily visits. Conversations among patients and visitors are shared with the rest of the	2PC8P	



people. Visits terminated even if visitors come from thousands of miles.		visitors away.
Visiting should not be limited or restricted.	2PC12EE	
The regulations, should make it clear that regulations applicable to the length of visits and the number of visitors allowed to visit a resident at the same time must be of general application and applicable to all patients. Denials with respect to specific residents must be in accordance with good cause procedures.	2PC23T	Good cause criteria, as outlined in Section 884 (c) and (d), specifies that rights for “a” individual patient and does not allow or provide for a blanket denial toward a specific group of patients. This right will remain unmodified.
oes this give the patient the right not to participate in treatment activities at all because they want to visit all the time?	2PC10A	The comment is not specific to post modification language. Questions and/or complaints may be filed with the Patients Rights Advocate.
If only security and safety are reasons for denial does this also limit the staff from not allowing a visit that is considered counter-therapeutic?		Good cause criteria, as outlined in Section 884 (c) and (d), specifies that rights for “a” individual patient and does not allow or provide for a blanket denial toward a specific patient.
(b)(4) p.g. 10 of 19 A right to personal visits... “The additions are not specific. Denying visits for reasonable security and safety of persons needs to be an actual proof that security and safety in an issue and not just “suspicion.”	2PC13G	Determining rather or not the security and safety of the facility is threatened is determined by Hospital police as well as staff. Suspicion of safety and security violation has merit and may be enough to revoke visiting if necessary. Should the patient have a complaint or grievance they can go through the complaint process.
Text again appears to be ambiguous. A revision may be necessary to the text...Except as is necessary for reasonable security of the facility and the safety of persons." What is reasonable security of the facility	2PC9F	

<b>884 (b)(5) - Telephones</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
The regulation is improved in that it provides a right to confidential telephone calls. However, the definition of confidential is too broad. The regulation provides only that telephone calls should not be monitored by hospital staff. The regulation should provide that a confidential telephone call is a call that is not monitored by anyone including hospital staff.	2PC20F 2PC23U	Monitoring telephone calls would be in conflict with the addition of the word “confidential” to this right and will not occur by staff. This right will remain unmodified.
Phone cards would be a welcomed addition, putting us on equal footing to civil commitments in other states and institutions.	2PC8Q	Not applicable to post-hearing changes
Added text to include; [telephonic communications during business hours, would resolve any ambiguity]	2PC9D	This request is more restrictive than the modified regulation. The post-hearing changes will stand.
Does this imply or allow the patient to make three way calls?	2PC10B	Provisions for allowing three-way calls will be determined by individual facilities. Not applicable to post hearing changes
The phones should be available at all times for patient's to use without restriction.	2PC12FF	Timeframes for phone calls will be determined by individual facilities. Not applicable to post hearing changes

<b>884 (b)(6) – Mail and Letter Writing Materials</b>	<b>Number</b>	<b>DMH Response (including modifications)</b>
Section 824 (b) 6, unsatisfactory. Our major concern was one of mail confidentiality, not just legal mail. Most Non-LPS patients are voters and civil detainees, which further the notion that for staff to open regular mail is absolutely unlawful.	2PC1A 2PC22AE	Not applicable to post hearing changes.
We will accept a modification <u>if absolutely necessary</u> , that incoming	2PC1C	Not applicable to post hearing changes.

regular mail be opened and read in front of the patient. Outgoing mail need not be inspected, period.		
Sealed outgoing mail left alone. Incoming regular mail opened during the ward's mail call by staff is acceptable.	2PC1E	Not applicable to post hearing changes.
The right to receive "unopened" correspondence pursuant to the LPS Act, section 5325 (e) should not change. CCR Title 15, 3135, See Wolff, 418 U.S. at 575, In re Jordan, 7 Cal at 941.	2PC2G	Not applicable to post hearing changes.
Objections to the opening of incoming and outgoing mail of 6600 patients. Hospital staff and /or Department of Police Services staff shall not read patients mail private or confidential.	2PC3H	Not applicable to post hearing changes.
I have a First Amendment right to write people and say what I want.	2PC5WW	Not applicable to post hearing changes.
No limit on mail (unless there is a clear and individual danger or problem) should even be considered. All should continue to be considered confidential.	2PC8U	Not applicable to post hearing changes.
There appears to be some 'misunderstanding' as to the proper procedures involving mail	2PC9G	Not applicable to post hearing changes.
There is a typographical error at the end of section 884 (a). "Subsection (b)" should read "subsection (c)."	2PC23P 2PC9H 2PC23P 2PC11C 2PC11D	Thank you for spotting this error. The subsection (b)(6) is modified to read:  <b>7</b> (6) A right to have access to letter writing materials and to mail and receive correspondence. Designated facility employees shall open and inspect all incoming and outgoing mail addressed to and from patients for contraband. Confidential mail, as defined in Section 881(b)(c), shall not be read. Limitations on size, weight and volume of mail shall be specified by formal facility policy.
Recommends language changes to include: Correspondence materials shall be provided, DMH employees shall not open, inspect, or otherwise read patient incoming or outgoing mail.	2PC12GG 2PC21DA	Not applicable to post hearing changes

884 (b)(7) - Packages	Number	DMH Response (including modifications)
Packages are opened by staff in front of patients unless a waiver is stipulated "In Absentia."	2PC1B	Not applicable to post hearing changes.
Right/privilege that should be better than prison, not worse, less restrictive, not more.	2PC8R 2PC22AE	Not applicable to post hearing changes.
Recommends changes to reflect: That there shall be no limitations other than U.S. postal service regulations on size, weight, volume or frequency of packages received by patients. Packages may be opened by patients in the presence of DMH employees to inspect for contraband.	2PC12HH	Not applicable to post hearing changes.

884 (b)(8) – Legal Reference Material	Number	DMH Response (including modifications)
There should be no limitations on the time, duration, frequency, nor any restriction other than brought on by individual need involving dangerousness or behavioral problem.	2PC8S	Not applicable to post hearing changes.
Patients shall have right to access to the legal library to research and compile litigation. And that there shall not be any limitations on this	2PC12II	Not applicable to post hearing changes

access except for the normal open hours of the California State Library

884 (b)(9) - Education	Number	DMH Response (including modifications)
This regulation is inconsistent with state and federal special education laws that do not allow the right to education to be denied for "good cause." The resident's treatment plan and the secure facility environment do not override the obligation of the Department to provide a free appropriate education in accordance with an individualized education plan pursuant to state and federal law. Reference the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (d)(1)(a); 34 CFR, Sections 300.1, 300.554; California Education Code, Sections 56000, 56026; Welfare & Institutions Code, Section 4011.5	2PC23V	Federal law only requires educational opportunity; up to the age of 22; however, DMH will not prevent opportunities for further education as provided by each facility. Any education provided or allowed beyond the public education required by law shall be up to each individual facility based on safety and security needs as well as the individual treatment needs of the patient. For purposes of denial of this right, for a specific day or class, as it relates to treatment program, the denials must meet good cause criteria.
Any and all educational benefits should be made available to 6600 patients because the purpose of a 6600 commitment at ASH is not punitive.	2PC4GG	
Should include the same right to higher education that has been enjoyed by prisoners in state prison at any level	2PC8T	
Patients have the right to participate in educational programs sponsored by accredited educational institutions.	2PC12JJ	

884 (b)(10) – Social Interaction	Number	DMH Response (including modifications)
Under this regulation, as written, any human contact can be denied for "good cause." This is not a protection of rights. All social interaction should never be taken away. This regulation should therefore be transferred to the list of non-deniable rights in Section 883.	2PC23W	The intent of this right is to provide treatment in a manner that does not completely isolate the patient or prevent friendships and socialization. The right, as currently proposed in these regulations, provides for this. However, social interaction does not always occur in a safe manner, not just in a state facility but in many public settings. When the exercise of this right results in jeopardizing the safety of the patient or others, the facility has an obligation to deny the right until the danger or risk no longer exists. This right will remain unmodified.
(p.g. 11 of 19) This entire addition needs to be placed back in (b) page 9	2PC13H	
The right to social interaction has been prohibited here for quite some time.	2PC4HH	This is an issue with the individual facility and not the language in the post-hearing changes. Patients may file a complaint with the hospital Patients' Rights Advocate on this issue.
If 883(11) had any validity (non-deniable right to recreational opportunities) there would be no need for 884(10).	2PC8U	DMH sees a difference between social interaction and structured physical exercise and recreational opportunities. This right will remain unmodified.
Patients have a right to participate in leisure activities of their choosing either in organized activity groups or privately.	2PC12KK	The right to social interaction does not prohibit patients from choosing organized or private leisure activities unless it poses an issue with safety and security.

884 (c) – (g) – Good Cause Criteria for Denials	Number	DMH Response (including modifications)
Section shall only be denied for good cause...the good causes listed in (1-4) all make good sense and have generally been accepted policy for	2PC8	884 (c), (g), and (h) are not applicable to the post hearing changes.

mental health rights. Who will decide that there is no less restrictive way of doing things? Unless an unbiased party is invited to partake in these decisions, there will never be any true consideration of less alternative measures/  Good cause for denying a patient the exercise of a right must be determined by an independent judicial review.	2PC12LL	
--	---------	--

884 (d) –	Number	DMH Response (including modifications)
Section 884 5(d) "A denial of a right shall not exceed thirty days without additional staff review." An androgynous statement. Can an additional statement of defining "additional staff review" be interjected?  A denial of any right shall be the shortest possible time and in no event exceed thirty days without additional judicial review  Each denial of a right shall be fully documented and copies of each provided to the patient immediately. (Due Process)	2PC9I  2PC12MM  2PC12NN	The denial is reviewed on an on-going basis to determine that good cause still exists and a right under this section cannot continue to be denied when good cause no longer exists. Interdisciplinary teams know that 30 days is the maximum length of time a denial can be in place without review or a review to modify the treatment plan.  According to Section 884 (i) the patients have the right to review their records.

884 (e) –	Number	DMH Response (including modifications)
884 (e) (5) This section refers to notions required to be made in the patient's treatment record by the facility director., At ASH this is required by the Program Director or designee by policy #602.3.	2PC6DDD	Not applicable to post hearing changes.

884 (f) –	Number	DMH Response (including modifications)
Reinstate the word "resident" which has been stricken.	2PC21DB	All persons residing in a state hospital shall equally be referred to as patients. This right shall remain unmodified.

884 (h) –	Number	DMH Response (including modifications)
		<div style="text-align: right;">8</div> <p><del>(g)</del>(h) A patient's right under this Section shall be restored <del>not</del> continue to be denied when the good cause for its denial no longer exists. When a right has been denied, staff shall employ the least restrictive means of managing the behavior that led to the denial. The date that a specific right is restored shall be documented in the patient's treatment record.</p>

884 (i) – Good Cause Criteria for Denials	Number	DMH Response (including modifications)
An androgynous statement as to the text pursuant to subsection (I), may be necessary. Quote, "to the patient, and his {or her} her attorney..." unquote. There are several female 'patients' under numerous statutes incarcerated within the system.	2PC9J	<div style="text-align: right;">9</div> <p>DMH has modified the language to "their" to eliminate gender references.</p> <p><del>(h)</del>(i) Information in the patients' treatment record pertaining to a</p>

		<u>denial of rights shall be available on request to the patient, their attorney/conservator/guardian, the Department, or excluding the patient identity, a member of the State Legislature.</u>
(i) – This new proposed regulation is broader than the statutory authorization. Welfare & Institutions Code, Section 5326.1 provides that information may be released to the State Legislature only if information about the identity of the resident is removed.	2PC23X	The Department agrees with this comment and will revise this subsection of the proposed regulations regarding patient identity.  See response to 2PC9J, above for modified regulation text.
Section 884 (i) We believe the word "the courts" should be inserted between "... the Department" and "...or a member of the State Legislature."	2PC11E	Documents are provided to the court in compliance with applicable statutes for the specific categories of patients.
Page 13 of 19 (i) [Replace “available” with “provided” and add “patients’ rights” and “ombudsman”.]	2PC13J	Changing the word “available” to “provided” will require DMH to unnecessarily automatically send information in all cases, not just upon request.  DMH did not include “patients’ rights” as the Patients’ Rights Advocate has access inside the hospital.  “Ombudsman” is not applicable to non-LPS patients.

885 - Complaint and Appeal Procedure	Number	DMH Response (including modifications)
Informing of and providing non-LPS patients with a written procedure for filing complaints or appeals should include assistance for people who do not speak English, or are deaf, or for any other reason cannot write, read or understand the material.	2PC20G	Section 5325, W&IC mandates that rights be posted in predominant languages of the community and explained in a language or modality accessible to the patient. It is not necessary to repeat in these regulations what is already required by statute. This section of the proposed regulations will remain unmodified.
The word “appeal” needs to be stricken as it mistakenly implies a DMH facility resident has more than a right to complain – no appeal procedure is provided.	2PC21E	This section of the proposed regulation requires that each state facility maintain a process for filing both a complaint and/or an appeal procedure (see Section 885(f)-(g)). This section of the proposed regulations will remain unmodified.
The PRA is not equipped to deal with or handle staff/patient liaison grievances, except in serious matters when rights violations occur. There needs to be a entirely separate grievance system established within all DMH facilities whereby patient are able to address and resolve lesser issues requiring mediation, having within it a means for appealing staff actions and/or facility conditions. The Dept of Corrections has for many years had a well-defined form for grievance handling through the CDC-602 Inmate/Parole Appeal process.	2PC22D	The regulation provides a mechanism for patients to file a complaint or grievance, and state facilities have delegated this function to the PRA. If, at any time, a patient is not satisfied with the services provided by the PRA, the grievance process may be used. Patients have, and will continue to have, the ability to seek remedy or assistance by staff for non-rights or “lessor” issues. The complaint and appeal procedure provided for under Section 885 of these proposed regulations will remain unmodified.
I was delighted to see you put time limits on them. But you dropped the ball on 9g) no time limit is placed on the "Director of the Department". Nor is there any mention that the next step a habeas corpus could be filed or help in filing the writ.	2PC5XX	No time limits were modified in this Section. Not applicable to post hearing changes.
Perhaps the complaints would lessen if the number of violations lessened. The advocacy services offered here at ASH has been very poor for years. I have been dissatisfied with a number of responses to	2PC8X	This is an issue with the individual facility and not the language in the post hearing changes. Not applicable to post hearing changes.

various complaints and forwarded them to the next level ... The bottom line is that there is little to no advocacy (at least for the patients) here at ASH...		
What does one do if, if not satisfied upon response from the Director "of Mental Health"? Recommends additional language to include response timeframes for Office of Patients Rights and Director's office, patient's right to file a writ of Habeas Corpus, under penal Code 1473 et seq. And the complaint be subject to judicial review in accordance with PC 1473 et seq., for Non LPS patients, and (USCA Const. Art. I Section, 9, cl).	2PC9K	Not applicable to post hearing changes.
All patients shall be informed and provided with a written procedure for filing complaints or appeals including those alleging violations of <u>any</u> of their constitutional, statutory, and/or regulatory right(s) both federal and state. Including those special rights for the mental health patients.	2PC12NN	The rights in this rulemaking are the applicable rights provided to the patients upon admission.

### Article 3. General Limitations Applicable to Non-LPS Patients.

890 - Clothing	Number	DMH Response (including modifications)
This is dangerous considering that the Atascadero Executive Director has stated in a town hall meeting that he would like to dress us all in pink because of the escape by a patient from this institution.	2PC5YY	Not applicable to post hearing changes.
A reasonable and unbiased person might wonder why similarly instituted patients in other state and federal facilities seem to be able to wear their own clothing... Recommends staff wear uniforms (perhaps white) and patients wearing their own clothing.	2PC8AA	Not applicable to post hearing changes.
Civil detainees shall the right to wear clothing of their choice.	2PC12OO	Not applicable to post hearing changes.

891 - Internet Usage	Number	DMH Response (including modifications)
This rule is totally and completely without logic, merit, intelligence or validity, and supports no known or expressed treatment, therapeutic or forensic purpose. There are certainly methods at the disposal of DMH for the utilization of "v-chip" technology for the blocking of undesired internet access, but to assume that all patients will abuse it and violate the law by means of its use is absurd and cannot be supported by either individual patient histories or the facts.	2PC22E	The DMH believes it is in the best interest of public safety to prohibit Non-LPS patients access to the internet.
Prohibiting it usage is a direct violation of our First Amendment freedom of speech and freedom of association not to mention that "non-LPS" patients are singled out, a violation of the Equal protection clause.	2PC5ZZ	
Does this mean that non-LPS shall have access to computers but not the Internet? Computers are available to many of the similar commitments in other states...	2PC8Y	
Section 891 "Internet Usage" We suggest this section should read: "Individual treatment teams shall make the determination as to which	2PC11F	

Non-LPS patients shall not have access to the Internet"		
Patients, especially civil detainees, shall have the right to have access to the Internet.	2PC12PP	
This is also a violation of your new proposed rules 883 (b) (2) Least Restrictive, and 884 (9) Access to public education, or publicly funded programs.	2PC5AAA	Internet usage has nothing to do with least restrictive means and education can occur without internet usage.

892 - Operating Businesses	Number	DMH Response (including modifications)
This is unacceptable as no resident or patient may lawfully "loan a stamp" trade a magazine, give away <u>any article</u> or even share anything. Provision must be made to specify property or strike section 892.	2PC21F	Comments are unclear and do not appear to be directly related to this regulation.
What is the justification for such a blanket restriction? As long as the patient is not sending and receiving goods in and out for the facility, or otherwise requiring added state expense or employee time/involvement, what institutional security or administrative purpose is compromised through patient continuing to manage their own business affairs?	2PC22F	Non-LPS patients are committed to the state hospitals and other DMH administered program for treatment services. While the DMH provides vocational training and preparations for release, the purpose of hospitalization is not to support individual entrepreneurial endeavors.
It appears that the intent and determination of DMH is to completely sever the mental health patient from any and all outside connectedness for no other purpose than to maintain utter and complete control, regardless of the detriment or deterioration that may fall on the patient and his/her family.	2PC22G	
If it's the hospital's position that Non-LPS patients not operate a business from within the facility, then all patients affected by that stipulation, shall provide with jobs within the facility, pursuant to the Federal labor Standards Act.	2PC4II	
All patients, especially civil detainees, have the right to own and operate a business even while in custody.	2PC12TT	
Does this imply that LPS patients can conduct business within a facility? If conducting said business in no way interfered with facility function why is there any need for this section?	2PC8BB	These rights do not apply to LPS patients. Not Applicable to post hearing changes.

Other Miscellaneous Comments	Number	DMH Response (including modifications)
The best change was in 885 "Complaint and Appeal Procedure" although still slightly flawed, it is a good start.	2PC5BBB	Your comments are noted.
The other rule changes are either too ambiguous granting too much to the "Department" or such limited meaning as to be worthless.	2PC5CCC	Your comments are noted.